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October 1, 2001

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Docket to Determine the Compliance of BellSouth Telecommunications
Inc.'s Operations Support Systems with State and Federal Regulations*
Docket No: 01-00362

Dear David:

Attached is AT&T Communications of the South Central States, Inc.'s, TCG MidSouth, Inc.'s, and the Southeastern Competitive Carriers Association's Motion to Establish a Protective Order and draft Protective Order.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Sylvia E. Anderson".

Sylvia E. Anderson
General Attorney

A small, handwritten circular mark containing the letter "a".

cc: All parties of record

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Docket to Determine the)	
Compliance of BellSouth)	Docket No.: 01-00362
Telecommunications, Inc.'s)	
Operational Support Systems with)	
State and Federal Regulations)	

MOTION TO ESTABLISH A PROTECTIVE ORDER

AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association (collectively the "CLECs") hereby move the Tennessee Regulatory Authority ("TRA" or "Authority") to establish a protective order in this docket. A proposed Protective Order is attached. The proposed Order is based on the Authority's Protective Order adopted in the pending Section 271 (docket no. 97-00309), but has been modified to allow the parties to make broader use, subject to appropriate legal protections, of confidential information obtained through discovery in this docket.

This docket is one piece of several, interrelated proceedings, now underway, or soon to begin, in Tennessee, in other BellSouth states, and at the Federal Communications Commission ("FCC"). Each relates, directly or indirectly, to BellSouth's applications for interLATA authority under Section 271. As part of that process, the states and the FCC will address whether BellSouth's operational support systems ("OSS") provide nondiscriminatory support to competing carriers. Since those federal and state decisions could affect the TRA's ability to make an independent determination of OSS and 271-related issues, it is critical that the FCC and those other

state commissions upon whom the FCC is relying to investigate BellSouth's OSS, have full access to all relevant information concerning those matters.

The CLECs have therefore amended the TRA's standard protective order so as to permit parties to file, in other state and federal proceedings, confidential information obtained through the discovery process in Tennessee. To insure that the information remains confidential, the proposed order requires that all such information may only be filed in accordance with the applicable protective orders in those states and with the rules of the FCC regarding the filing of confidential information.

To the knowledge of the CLECs, there is a proprietary order in effect in every state in the BellSouth region. Those orders, each of which has been signed by BellSouth, are designed to protect the confidentiality of BellSouth's records and third party confidential information. If a party to this docket desired to use information obtained in Tennessee as evidence in another state's 271 proceeding, the party would have to submit such evidence under the terms of that state's protective order. Therefore, BellSouth and the other parties would be assured that the Tennessee information is protected to the same degree as all other confidential information is protected in that state proceeding. Similarly, anyone wishing to file such information with the FCC could only do so in accordance with the FCC's rules on the treatment of confidential information.

The proposed protective Order will thus insure the confidentiality of the protected information. More importantly, the proposed Order will allow the sharing of information

among the states and the FCC that those regulators may need in order to make informed decisions about OSS-related issues.¹

Finally, the proposed protective Order will help put all parties on a level playing field in these ongoing 271 proceedings. BellSouth, of course, is not restricted from introducing any evidence the company can produce concerning, for example, the “regionality” of its OSS. But BellSouth has no obligation, except in response to discovery requests, to produce evidence which may contradict the carrier’s arguments. If a CLEC obtains such information in Tennessee, the CLEC should be able to use that information in any other BellSouth state or at the FCC to refute BellSouth’s one-sided presentation. Otherwise, state and federal regulators may only see half the picture and, unwittingly, make decisions which could impact related proceedings in Tennessee.

I. BELL SOUTH’S CASE DEPENDS ON REGION-WIDE INFORMATION

BellSouth will rely heavily on the results of the third-party testing of its OSS in Georgia and an attestation by Pricewaterhouse Coopers, LLC, to demonstrate to the Authority that its OSS are regional and are nondiscriminatory.²

CLECs have thus far been permitted only limited discovery by which to evaluate the completeness and reliability of the third-party tests and to investigate state-specific differences in BellSouth’s OSS. The discovery the CLECs have been able to obtain to date raises questions about the regionality of BellSouth’s OSS. For example, AT&T has

¹ Conversely, this kind of Order from Tennessee may persuade other states to share OSS and 271-related information with Tennessee regulators.

² See *Testimony of Ronald M. Pate*, filed in Docket 01-00362, July 31, 2001 at 9-10 & 195 which was stricken by the TRA as being premature by Order dated August 3, 2001.

discovered that during portions of the third party testing in Georgia and Florida, BellSouth provided preferential treatment in its Local Carrier Service Centers ("LCSC") for Local Service Requests from these two states. The extent to which such preferential treatment has skewed the third-party test results in Georgia and Florida remains unclear. This example demonstrates the importance of CLECs' ability to show other commissions within BellSouth's region and to the FCC that the alleged "regionality" of BellSouth's systems provides no assurance that the performance of those systems is nondiscriminatory.

The Authority, however, has granted the CLECs the opportunity to further explore these and other problems by permitting discovery regarding the regionality of BellSouth's systems (Phase I) and reliance on OSS testing in Florida and Georgia and whether additional Tennessee-specific OSS testing is necessary (Phase II).³ The TRA should allow CLECs to use information discovered in Phase I and II in other state and federal proceedings related to BellSouth's Section 271 compliance.

II. FAILURE TO PERMIT CLECS TO USE INFORMATION OBTAINED THROUGH DISCOVERY IN TENNESSEE IN RELATED PROCEEDINGS IN OTHER STATES AND BEFORE THE FCC WILL RESULT IN AN UNFAIR ADVANTAGE TO BELL SOUTH AND MAY IMPEDE THE AUTHORITY'S OTHER STATES', AND THE FCC'S ABILITY TO EVALUATE WHETHER BELL SOUTH PROVIDES NONDISCRIMINATORY ACCESS TO LOCAL SERVICES

Establishing a protective order that will allow discovery produced in Tennessee to be used in all related regulatory proceedings at the state and federal level may assist this

³ See Order Establishing Issues and Procedural Schedule, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support System with State and Federal Regulations*, Docket No. 01-00362 (Sept. 13, 2001).

Authority in making its own, independent and fully informed evaluation of whether BellSouth presently provides nondiscriminatory access to local services. For example, the Georgia Public Service Commission expects to vote on its recommendation regarding BellSouth's Section 271 compliance early this month. Should the Georgia Commission recommend authorization of BellSouth for interLATA authority, BellSouth has expressed its desire to file quickly its application with the FCC.

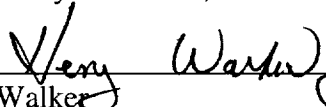
The discovery BellSouth and others will provide in Tennessee could yield important information that should be raised before the FCC when that agency reviews the Georgia 271 application. If the TRA limits the applicability of discovery materials for use in Tennessee only, key information the FCC will need to appropriately evaluate BellSouth's application will be hidden. For example, CLECs may discover additional evidence of discriminatory treatment and state-specific differences among BellSouth's OSS. Without this information, the FCC could determine, in error, BellSouth's systems are regional and nondiscriminatory. In that case, the TRA's ability to render a contrary opinion based on the evidence to which it alone had access could be compromised.

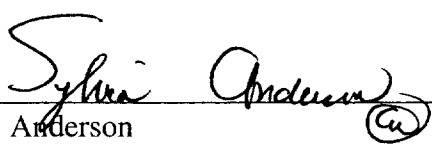
Equally important is the CLECs' ability to provide this information to other state commissions. The FCC is looking to state regulators to investigate and make detailed factual findings concerning 271 issues. Such findings must be based on a complete explanation of the evidentiary record. Because BellSouth maintains that its OSS are regional, OSS deficiencies identified in Tennessee will likely reveal similar deficiencies in other BellSouth states. CLECs should be permitted to demonstrate these deficiencies to the other state commissions. Accordingly, the TRA should not restrict the use of confidential information obtained in Tennessee for use in only this docket.

CONCLUSION

Fundamental fairness dictates that if BellSouth is able to rely on regional information like third-party OSS testing, attestations from Pricewaterhouse Coopers regarding regionality and additional information from the various states in its region, so too should CLECs be permitted to use information uncovered through the discovery process in Tennessee in any other forum in which BellSouth relies on its regionality and nondiscriminatory access to OSS arguments. The protective order the CLECs propose here accommodates the parties need for confidentiality and protection of its business documents, yet permits CLECs to play on a level playing field. Accordingly, the Authority should issue a protective order that does not limit the use of confidential information obtained in Tennessee for use only in this docket.

Respectfully submitted,

By: 
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(615) 252-2363
Counsel for Southeastern Competitive Carriers
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By: 
Sylvia E. Anderson
AT&T Communication of the South Central States
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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee
September __, 2001

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s
Operational Support Systems with State and Federal Regulations*

Docket No. 01-00362

PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development or other sensitive information, and which has been specifically designated by the producing party. A producing party is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover with the accompanying page numbers listed either on the cover or on a subject index page. Each document containing CONFIDENTIAL INFORMATION must be highlighted under or through the passages of information to clearly identify the CONFIDENTIAL INFORMATION without defacing the information or rendering it undecipherable. The document must be accompanied by

proof of confidentiality, that is, an affidavit showing the cause of protection under this Order. The Affidavit may be reviewed by the Pre-Hearing Officer, Administrative Law Judge or the Authority for compliance with this paragraph. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Section 10 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;¹
- (b) in-house counsel for the parties;
- (c) officers, directors, or employees of the parties, including employees of the Consumer Advocate Division, who are directly and specifically consulted or involved in this docket; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;
- (d) TRA Directors and members of the staff of the TRA;

¹ For purposes of this Protective Order, a related proceeding is one in which BellSouth is seeking either state or federal approval under Section 271 of the Telecommunications Act of 1996 or one in which BellSouth's Operational Support Systems are at issue. Any such submission to another state commission or the FCC must be made in accordance with the terms and conditions of an effective proprietary order in that state or in accordance with the rules concerning confidential filings at the FCC.

(e) Commissioners and Staff in related proceedings:²

(e)(f) outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket or related proceedings³, provided that to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that party's behalf, the party shall give five (5) days' written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the Tennessee Regulatory Authority, the Pre-Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be served within three (3) days after service of the motion. Pre-Hearing conferences may be called to confer with the parties on the Motions to Limit Disclosure. All service shall be by hand delivery or by facsimile.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the producing party.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any TRA Director, member of the TRA staff, employee, officer or director of the parties, including any employees of the Consumer Advocate Division, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient Director, staff member, employee, officer, or director, who shall be bound by the terms of this Order. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an affidavit in the form of that attached to

² See note 1, *supra*.

³ See note 1, *supra*.

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this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents stamped CONFIDENTIAL constitutes a violation of this Order. This affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each party shall provide the producing party a copy of each such Affidavit and shall keep the Affidavits executed by the parties' experts or consultants on file at their respective offices.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. In no event shall the TRA be liable for any claims or damages resulting from the disclosure of a document while not so designated as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may

request designation of such documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Secretary of the TRA in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative

Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during witness examinations so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge to protect the confidential nature of the information.

9. Except for documents filed with the Executive Secretary of the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL by filing a motion with the TRA, the Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents information, or testimony should not be so treated. All documents, information and testimony designated as

CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than fifteen (15) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than ten (10) days prior to the Hearing on the Merits. Motions made and subsequent Replies received with the ten (10) days prior to the hearing on the Merits shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. Nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer Advocate Division as expressed in *T.C.A. § 10-7-504(a)* titled *Confidential Records*, and *T.C.A. § 65-4-118* titled *Consumer Advocate Division*.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL and by filing an appropriate motion with the TRA, in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days or counsel in possession of such documents shall certify to counsel or the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials and all copies of the extracts from the filings, exhibits and other materials thereof have been destroyed.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

19. That any party aggrieved with the Authority's decision in this matter may file a petition for Reconsideration with the Authority within (10) days from and after the date of this Order.

CHAIRMAN

DIRECTOR

-

DIRECTOR

ATTEST:

EXECUTIVE SECRETARY

AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, being duly sworn, deposes and says:

1. I am employed or retained by _____, who
is a party in Docket No. 01-00362.

2. I have read the Protective Order of the Tennessee Regulatory Authority dated
_____, 2001, respecting disclosure of Confidential Information. I agree
to be bound by the terms thereof, and I understand that unauthorized disclosure of Confidential
Information constitutes a violation of the Order and may subject me to an action for injunctive
relief and/or damages.

FURTHER AFFIANT SAITH NOT.

SWORN TO AND SUBSCRIBED before me this _____ day of _____,
2001.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 1st day of October 2001.

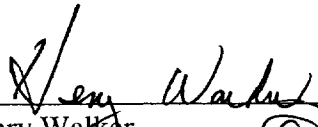
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